

FINAL MEETING MINUTES
DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Monthly Meeting of the Board

April 3, 2014, 1:00 p.m.
Room 540 South (BEGA Board Hearing Room)
One Judiciary Square

AGENDA

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:02 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

II. Ascertainment of Quorum

All Board members were present constituting a quorum.

III. Adoption of the Agenda

The Agenda was adopted unanimously.

IV. Acknowledgment of Adoption of the Minutes of the March 6, 2014, meeting.

The Chairman noted that the minutes of the March 6, 2014, meeting were unanimously approved by email vote and have been posted on the website.

V. Report by the Director of Open Government

a. D.C. Code

The Office of Open Government announced the launch of DC Decoded on March 19th -- a partnership with the OpenGov Foundation to provide the DC Code for free and on a user-friendly website. The Director of Open

Government, Traci Hughes noted that this is the first time the DC Code has been offered without copyright restrictions to the general public. Users can browse by topic, highlight words and get online definitions to better understand the District's laws. The second phase of DC Decoded will do the same for the DC Municipal Regulations. The announcement prompted a panel discussion on the Kojo Nmandi show on March 24th to discuss the importance of government transparency and the launch of DC Decoded. Director Hughes participated, along with Dave Zvenyach, general counsel to the Council; Josh Tauberer, the founder of GovTrack.us; and Seamus Kraft, Executive Director and Co-Founder of the OpenGov Foundation. The partnership with the OpenGov Foundation and the launch of DC Decoded was extremely well received by the coding community, and generated some media mentions, including a blog post in the Washington Post and an online write up in Government Technology. Director Hughes informed the Ethics Board that they are now putting their heads together to come up with some creative ways to get the word out to the general public.

b. Open Government Summit

Director Hughes told the Board that DC Decoded was announced during Sunshine Week, and timed for release the same day of the Open Government Summit held at the National Press Building. Director Hughes gave the featured remarks, and the panel discussion focused on some of the ways the District's data is currently being accessed and used by the coding community; and the public's access to information under the Freedom of Information Act

c. Personnel

Director Hughes is very pleased to announce that Jada Irwin has officially started as the IT Specialist for BEGA.

d. Training

Director Hughes conducted Freedom of Information Act (FOIA) training at the DC Public Charter School Board on March 21st. The April 8th, mandatory Open Meetings Act training for all Boards and Commissions points of contact will occur in the Old Council Chambers from 10 AM to Noon.

e. Open Data Policy

The Mayor's Office has allowed Director Hughes to provide input into a draft Mayoral Order on open data. Director Hughes has recommended that the Order specifically mandate the inclusion of the Office of Open Government in a formal advisory capacity as the city creates policy regarding the publication and maintenance of data. Director Hughes has noted that she has not received word on whether the recommendation, among other suggested edits, will be incorporated into the final document. It is worth noting that the Order closely follows the City of Chicago's order on open data which includes a formal advisory committee that updates that city's Chief Data Officer on publication of agency data. To that end, Director Hughes is establishing a working group to advise the Office of Open Government on development, data trends, data innovations, data use and data policy. The group will include leaders in the private sector development field who have successfully democratized data and are now offering useful apps for the public or technology for predictive analysis that is used by jurisdictions domestically and internationally. Director Hughes hopes that the members of the working group will be finalized within the next two weeks. The aim of the group will be to assist the Office in making recommendations to make District government more transparent, and to expose the Office and the Board to new tools and technologies currently utilized by the DC tech community to keep the city in pace with open data uses and trends. Director Hughes was informed on April 3 that the Mayor included \$2.5M in the proposed Fiscal Year (FY) 2015 budget funding to support IT enhancements related to the Open Government

Initiative. The funding is intended to be used to upgrade and enhance Track DC and the Data Catalog.

VI. Report by the Director of Government Ethics

a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month's activities (statistics)

Investigations: Opened since last meeting: 3
 Closed since last meeting: 5
 Total Open Investigations: 10

b. Publication and Reporting Obligations

The Office of Government Ethics (OGE) met all publication and reporting obligations. The Quarterly report for the period January 1, 2014, through March 31, 2014, has been posted on BEGA's website.

c. Trainings

- i. Attended by staff- none
- ii. Conducted by staff- 1 Hatch Act training (DCRA), and 2 New Employee Orientations
- iii. Upcoming – Financial Disclosure Statement (FDS) trainings on April 8, April 21, and April 28.
- iv. The OGE is also planning a series of Post-employment trainings – approximately once per month over the next six months (depending on initial interest) as the government begins to transition to a new Executive.
- v. Lesbian Gay Bisexual and Transgender (LGBT) training is being scheduled for April.
- vi. DC Leadership Council – Director Hughes and Sobin will make an appearance on April 11th.

d. Advisory Opinions

Since the last Ethics Board meeting, the OGE has received one request for a formal written Advisory Opinion. The Advisory Opinion was issued in just over two weeks and concerned outside employment.

Informal advice: Fielded 38 requests for informal advice since last Board meeting. Majority of this was written email advice.

In addition to other *sua sponte* Advisory Opinions mentioned previously (i.e. Boards and Commissions & Letters of Recommendation), the OGE is working on a Hatch Act Advisory Opinion that will deal with First Amendment issues when government employees identify themselves as such. Board Member Lathen raised a point as to whether you could identify yourself at a campaign event if asked and Director Sobin informed the Board that they will look into it.

The OGE is also completing a Do's and Don'ts reference chart for Post-employment matters as well as at least one specific advisory opinion on whether government employees can leave DC Government and then be hired as subcontractors. The OGE expects post-employment queries to spike between now and the end of the calendar year.

e. Financial Disclosure Matters

Attorney-Advisor Cristina Patzelt informed the Board that the OGE is preparing for the 2014 Financial Disclosure (FDS) filing season. All reports will be due May 15, 2014. Last week the OGE sent out four requests to gather information, including names of agencies, directors, and points of contact, for all executive, legislative, and independent agencies, and boards and commissions. The OGE also sent out a memo to agency heads last week so that we can begin to create a comprehensive list of Public FDS and Confidential FDS filers. The OGE is preparing to send a similar memo and letter out to all board and commissions chairs, to include them in the list of filers as well and obtain their contact information. Agencies already have begun to respond. The OGE plans to start sending out login and filing information letters as early as next week to Advisory Neighborhood Commissioners, and the week after to all other filers. The Advisory

Neighborhood Commissioners letter will explain their new shorter filing requirements.

f. Lobbyist Matters

Ms. Patzelt informed the Board that on March 27, 2014, the OGE sent out fifteen demand letters to lobbyists and clients who were assessed various civil penalties for untimely filing and failure to file lobbyist registration forms and activity reports. The fines ranged from \$10 to a total \$1300. The OGE has received one \$170 payment, and has been contacted by two other entities to resolve their penalties as well. Ms. Patzelt noted that the OGE may be coming back before the board next month with a waiver request for one such entity.

The OGE is also beginning the process of reviewing 2014 lobbyist filings. Some of the demand letters sent out last week included penalties for untimely filings or failures to file in 2014 in addition to 2013 penalties.

g. Budget Matters

Director Sobin informed the Board that the OGE's FY 15 budget hearing is scheduled for April 14, 2014. The OGE has asked for an additional investigator and an additional administrative person to handle FDS/Lobbyist Registration and Reporting. Director Sobin was told that this will be included in the Mayor's Budget proposal to the Council, which he understand is being introduced today. The OGE already has reached out to Councilmember McDuffie in anticipation of the budget hearing, but they have not received questions yet. Director Sobin hopes Chairman Spagnoletti will be able to attend and testify.

Director Hughes added that all of the Office of Open Government Budget requests have been denied. These requests included funding for the Open Government Portal, an attorney-advisor position, and full funding for the IT position. Director Hughes noted that the Mayor's Office believes that they can handle many of the Office of Open Governments duties. Chairman Spagnoletti advised Director Hughes that going through Councilmember McDuffie's office may be the best step to secure more funding.

As for The OGE's FY 14 budget, the reprogramming of our surplus Personnel Service funds (\$60,000) to Non Personnel Service funds has given us some breathing room.

Director Sobin also was pleased to report that the Mayor's budget folks have decided not to propose repealing one of the OGE's two Other-Type funds (the fine fund) after Director Sobin explained in a letter to the Mayor the importance of these funds to the OGE's independence and ongoing operations.

h. Legislation

On March 25, 2014, the Committee on Government Operations marked up and voted out of committee the Comprehensive Code of Conduct and BEGA Amendment Act of 2014. It covers five provisions: (1) clarifying BEGA's jurisdiction over independent agencies and excepted service folks ; (2) developing a universal code of conduct; (3) giving BEGA 30 days to present evidence of a formal investigation to the Ethics Board instead of the current 14 days; (4) allowing BEGA to refer matters for prosecution AND impose a penalty (currently it is either/or); and (5) clarifying that a failure to obey a court order imposing a BEGA penalty may be treated as contempt of court.

BEGA has been told that this legislation will be introduced for the first vote as emergency legislation on April 8, 2014, and that the permanent version will then get a second reading in May.

Director Sobin noted that there were several other provisions contained in the version of the legislation that initially was introduced, which BEGA was hoping would make it to final passage. These provisions were: (1) allowing the Director access to government records without a subpoena; (2) requiring cooperation with BEGA, subject to penalties for false statements; and (3) creating an affirmative obligation to report to BEGA conduct that violates the Code of Conduct.

As for the Comprehensive Code of Conduct provision, BEGA hopes to have draft legislation completed and ready for submission to the Council in the summer.

i. Rulemakings

- i. Director Sobin informed the Board about the first rulemaking which reflects the change in legislation regarding the financial disclosure reporting requirements of Advisory Neighborhood Commissioners (ANC). Previously, ANCs had to file, confidentially, the same financial disclosure statements as public officials. Now, ANCs only have to file a public Certification (that they filed & paid their taxes and have not been offered or accepted any bribes, etc). <http://www.bega-dc.gov/rules/proposed-rulemaking-%E2%80%93-title-3-chapter-57-%E2%80%93-financial-disclosure-advisory-neighborhood>

- ii. The second rulemaking corrects discrepancies between the Ethics Act and the rules regarding the issuance of subpoenas. The Rule now completely conforms to the statute – word for word. For instance, the term subpoena appears – singular – appears in our rules but in the statute the term is plural. <http://www.bega-dc.gov/sites/default/files/documents/Rulemaking%205303.2%20-%20Powers%20of%20Director%20-%20FINAL.pdf>

- iii. The OGE has a third rulemaking that we expect to complete shortly. This Rulemaking will set forth the process for the imposition of Non-Public Informal Admonitions by the Director and for Negotiated Dispositions. It will include provisions for expunging a respondent’s record, challenging a finding of a breach of the terms of a negotiated disposition, as well as a list of the various sanctions available in a Negotiated Disposition including public reprimands, censures and admonitions, community service, restitution, and remediation, and expungement. Director Sobin expects to

distribute this draft to the Board shortly via email and then list it on the agenda for next month's Board meeting at which the public will have an opportunity to comment before the Board votes. It will then go through the regular notice and comment period once it is published in the D.C. Register.

j. Non-Confidential Investigations

- i. #AI-017-13 – In Re: Larry Hicks - - appeal filed in D.C. Superior Court – The Office of the Attorney General's Office (OAG) is handling for the OGE but we are coordinating. Conference scheduled for May 30, 2014, in front of Judge Jeanette Clark.
- ii. #1008-006 – Y. Wimbish – Negotiated Disposition finalized and fully executed.
- iii. In re: Steven Allen – OAG obtained Superior Court Order to enter judgment of BEGA's final order. Allen owes his entire fine of \$1,900 and OAG is working to garnish his wages.
- iv. In re: Ron Moten - OAG obtained Superior Court Order to enter judgment of BEGA's final order. Moten owes his entire fine of \$1,000. OAG is working to locate and serve Moten.
- v. #1060-001 - OAH Investigation – put summary of what was said about Ethics Board issuing decision: <http://www.bega-dc.gov/sites/default/files/documents/Memo%20Op%20and%20Orders%20Denying%20MTD.040314.pdf>

VII. Opportunity for Public Comment

No comment from the public. The Open Meeting ended at 1:51 pm.

VIII. Executive Session (non-public) to Discuss Ongoing, Confidential Investigations pursuant to D.C. Official Code § 2-575(b)(14), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).

IX. Resumption of Public Meeting

The Open Meeting resumed at 2:05 pm

- a. There were no remaining public items to discuss.

X. Adjournment

Having no further business, the Meeting adjourned at 2:05 pm